Cf 2001 L ₹ (5)

**IN THE HIGH COURT OF CHHATISGARH AT BILASPUR**

**MCC NO. 52 OF 2005** Single Bench

**IN THE MATTER OF**

Predominant Engineers & Contractors Pvt Ltd
a company registered under the Companies Act, 1956
A – 14/28 A, DLF Qutub Enclave
Phase I – Gurgaon,
HARYANA Petitioner

Versus

Ind Agro Synergy Limited
a company registered under the Companies Act, 1956
Plot No. 624, Urla Industrial Area
Raipur – 493 221
CHHATISGARH Respondent

Also at :

Ind Agro Synergy Limited
201, Shri Krishna Apartments,
10, Daga Layout
North Ambazari Road
Nagpur – 440 033
MAHARASHTRA Respondent

P.R. No. 674/05
Presented by Shri Vinod Tiwari
dated 05/03/05

**Application under section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator**

(50)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** MCC(V)No. 52/2005 **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

**22.08.2006**

Shri V.R. Rao, learned counsel with Shri Vinod Deshmukh, Advocate for the petitioner in M.C.C.No. 52/05 and for respondent in M.C.C.No. 171/05.

Shri Anil Pandey, learned counsel for the petitioner in M.C.C.171/05 and for respondent in M.C.C.No. 52/05.

Since the petitioner in M.C.C.No. 52/05 is respondent in M.C.C.No. 171/05 vice versa, both these applications are disposed of by this common order.

The PECPL has preferred an application {M.C.C.No. 52/05} under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator in the capacity of petitioner.

Learned counsel for the PECPL submits that a dispute with respect to non-payment of Rs. 53,46,300/- towards the consultancy fees was raised by it. When the dispute so raised was not resolved, a notice dated 15.12.2004 addressed to the IASL was sent by the PECPL invoking arbitration clause of the contract agreement, whereby the name of Hon'ble Shri Justice P.K. Jain, retired Judge of the Delhi High Court was proposed to be appointed as arbitrator on their behalf to settle the dispute arose between them and called upon IASL to confirm the nomination of Hon'ble Shri Justice P.K. Jain (Retd.) to be appointed as arbitrator within 30 days from the date of receipt of that notice. However, the IASL by their reply dated 20th January 2005 did not consent to the proposed appointment of Hon'ble Shri Justice P.K. Jain (Retd.) as sole arbitrator and also no

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** MCC. 52/2005 **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

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| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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proposal was made on behalf of IASL for appointment of arbitrator by the said reply. Hence, the instant application i.e. M.C.C. No. 52/05 has been filed for appointment of sole arbitrator.

Subsequent to filing of this petition the IASL has also preferred an application being M.C.C.No. 171/05 under Section 11 (6) of the Arbitration and Conciliation Act with respect to the same contract agreement. It is not in dispute that the parties entered into a contract agreement for engineering and consultancy services on 02nd April 2003 and as per the stipulation of this contract agreement any dispute arising between the consulting engineer (PECPL) and the client (IASL) in regard to the terms and conditions hereof or their interpretation shall have the jurisdiction of the courts at Raipur only & exclusively and the dispute shall be settled by arbitrator in terms of the provisions of the Arbitration and Conciliation Act, 1996.

The contract agreement between the parties is not in dispute. It is also not in dispute that the parties have agreed to refer their dispute arising out of the contract agreement to the sole arbitrator though no procedure is prescribed in the contract agreement. The fact that PECPL by notice dated 15.12.2004 proposed the name of Hon'ble Shri Justice P.K. Jain (Retd.) to be appointed as sole arbitrator, requested the IASL to consent the proposed name which was subsequently turned down by the IASL vide reply dated 20.01.2005, is also not in dispute. It is also not disputed that the dispute between the parties can be referred to an arbitrator which is within the jurisdiction of this Court.

.O.

(52)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** MCC.No.52/2005 **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

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| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

As a result, both these applications are disposed of with an observation that it is a fit case for appointment of arbitrator for adjudication of the dispute.

However, at the time of hearing it was submitted by the parties to the proceedings that they have no objection if any retired Judge of High Court is appointed as the sole arbitrator to adjudicate the dispute.

I, therefore, hereby appoint Hon'ble Shri Justice C.P. Sen, retired Judge of M.P. High Court, Jabalpur, presently residing at Jnanranjan Sen Marg, 205, Congress Nagar, Nagpur-440012, as Arbitrator, subject to his consent.

The Hon'ble Arbitrator may settle his terms and conditions and remunerations.

Registry to intimate Hon'ble Shri Justice C.P. Sen, retired Judge of M.P. High Court, about his appointment as Arbitrator and to send all the papers along with address of the parties.

Parties are also directed to approach Hon'ble Shri Justice C.P. Sen (Retd.), who is presently residing at Jnanranjan Sen Marg, 205, Congress Nagar, Nagpur and to submit papers and to take part in arbitration proceedings.

**Sd/-**
**Dhirendra Mishra**
**Judge**

P.T.O.